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RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT
WITH THE FRANCHISE TAX BOARD GOVERNING PARTICIPATION
IN THE LOCAL GOVERNMENT SHARING PROGRAM**

WHEREAS, the State of California Franchise Tax Board ("FTB") offers local agencies the opportunity to participate in a Local Government Sharing Program pursuant to AB63. Under the program, FTB extracts certain information from the 2003 State income tax files and then transmits this information to local agencies. The information identifies taxpayers in the local jurisdiction who conduct business activities by zip code. Comparison of these records with the City's business license system will allow the City to determine whether the businesses in question have applied for required business licenses; and

WHEREAS, the proposed agreement is year to year and can be terminated anytime by providing 30 days written notice; and

WHEREAS, staff has determined that the program offers the City a cost-effective means of ensuring that local businesses comply with local business licensing requirements.

NOW THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MILPITAS as follows:

The City Manager is hereby authorized to execute an agreement with the FTB governing participation in the Local Government Sharing Program.

PASSED AND ADOPTED this 18th day of May, 2004, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 2086, Mail Stop B-27
Rancho Cordova CA 95741-2086
Telephone (916) 845- 3229
Fax (916) 845-6066

RECEIVED

APR 26 2004

STEVE WESTLY
Chair
CAROLE MIGDEN
Member
DONNA ARDUIN
Member

April 20, 2004

City of Milpitas
Attn: Emma Karlen
455 East Calaveras Blvd.
Milpitas, CA 95035

Subject: Agreement #C2323221

Dear Ms. Karlen:

Enclosed are two copies of the agreement (STD 213) for your cities participation in the Local Government Sharing Program (AB 63). Please have **both copies** of this agreement **signed by an authorized signatory of your city** and return them to this office by May 20, 2004 for final processing. You will be sent a fully executed copy upon final processing.

This agreement **must** also be accompanied by a **copy of a resolution, order, motion, or ordinance of your city council**, which authorizes execution of this agreement.

After final approval of the contract, you will be invoiced for the contract amount. The data will be sent after payment is received.

If you have any further questions about this agreement or the program please contact Robert Bisho at (916) 845-4762 or email him at bob.bisho@ftb.ca.gov.

Marty Blakely
Contract Administrator

AGREEMENT NUMBER C2323221
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Franchise Tax Board

CONTRACTOR'S NAME

City of Milpitas

2. The term of this Agreement is: **January 1, 2004 through January 31, 2005**

3. The maximum amount of this Agreement is: **\$ 1,821.00**
ONE THOUSAND EIGHT HUNDRED TWENTY ONE AND NO/100 DOLLARS

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	1 page
Exhibit B – Budget Detail and Payment Provisions	1 page
Exhibit C* – General Terms and Conditions	GTC304
Exhibit D - Special Terms and Conditions	3 pages
Exhibit E – Confidentiality Statement	1 page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Milpitas

BY (Authorized Signature)

DATE SIGNED(Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**455 East Calaveras Blvd.
Milpitas, CA 95035**

STATE OF CALIFORNIA

AGENCY NAME

Franchise Tax Board

BY (Authorized Signature)

DATE SIGNED(Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

Titus S. Toyama, Chief Financial Officer

ADDRESS

P.O. Box 2086, Rancho Cordova, CA 95741-2086

*California Department of General
Services Use Only*

☒ Exempt per: **SCM 404.B.5.b.**

EXHIBIT A**SCOPE OF WORK**

This Agreement is entered into by and between the Franchise Tax Board, herein referred to as (FTB) and the City of Milpitas, herein after referred to as the City.

1. FTB will provide to the City the following records obtained from the FTB Taxpayer Information System (TI) and Business Entity Tax System (BETS) files:
 - a. Taxpayer name
 - b. Taxpayer Address
 - c. Taxpayer Social Security Number or Taxpayer Identification Number
 - d. Principal Business Activity Code
2. The records will be extracted from information in the FTB files obtained from the 2003 tax year.
3. The records will be identified by zip codes located within the jurisdictional boundaries of the City. A database of the identified records will be transmitted to the City.
4. Information will be transmitted to the City project coordinator by way of a 3 ½ inch diskette, or CD-Rom.
5. The records will be transmitted to the City no later than January 31, 2005.
6. The project coordinators during the term of this Agreement will be:

Franchise Tax Board

Robert Bisho
Architecture and Data Management Bureau
P.O. Box 1468, MS-B-40
Sacramento, CA 95812-1468
Phone: (916) 845-4762
Fax: (916) 845-0412

City of Milpitas

Emma Karlen
Finance Department
455 East Calaveras Blvd.
Milpitas, CA 95035
Phone: (408) 586-3145

Franchise Tax Board

Business Acquisitions Unit
Attention: Marty Blakely
P.O. Box 2086, MS B-27
Rancho Cordova, CA 95741-2086
Phone: (916) 845-3229
Fax: (916) 845-6066

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISION

1. PAYMENT: The City agrees to pay FTB \$1,821.00 for 2003 data. Upon the receipt of executed agreements, the FTB will invoice the City for its share of the cost for 2003 data. The total cost reimbursable agreement shall not exceed \$1,821.00.
2. INVOICING: FTB shall render an invoice in triplicate to:

City of Milpitas
Emma Karlen
Finance Department
455 East Calaveras Blvd.
Milpitas, CA 95035

Upon receipt of the agreement executed by the FTB and an accompanying invoice, the City agrees to remit payment of the amount shown on the invoice, within 10 days.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. STATEMENT OF CONFIDENTIALITY: The Franchise Tax Board has tax returns and their data in its custody, which is confidential data. Unauthorized inspection or disclosure of State returns or other confidential data is a misdemeanor (Revenue and Taxation Code Section 19542 and 19542.1, and Government Code Section 90005).

The City and each of the City's employees who may have access to the confidential data of the Franchise Tax Board will be required to sign a statement attesting to the fact that he/she is aware of the confidential data and the penalties for unauthorized disclosure thereof.

2. USE OF INFORMATION: The City agrees that the information furnished or secured pursuant to this Agreement shall be used solely for the purposes described by this section. The information obtained shall be used exclusively to administer the city business tax program established by the City. The City further agrees that information obtained under this agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than identified in this section.
3. EMPLOYEE ACCESS TO INFORMATION: The City agrees that the information obtained will be kept in the strictest confidence and shall make information available to its own employees only on a "need to know" basis. Need to know are those authorized employees who need information to perform their official duties in connection with the uses of the information authorized by this agreement. The parties recognize their mutual responsibilities to protect the confidentiality of the state tax return information as provided by law and ensures such information is disclosed only to those individuals and of such purpose, as authorized by the Revenue and Taxation Code.
4. DISCLOSURE OF CONFIDENTIAL INFORMATION: Any unwarranted disclosure or use of tax return information or any willful unauthorized inspection of the return information is an act punishable as a misdemeanor. Inspection is defined to mean any examination of confidential information. No one other than city business tax license department employees may have access, use, and view or manipulate the data being transmitted to the City under this agreement. The city, in recognizing the confidentiality of State Tax Return information, agrees to take all appropriate precautions to protect from unauthorized disclosure of the confidential information obtained pursuant to this agreement. The City will conduct oversight of its users with access to the confidential information provided under this agreement, and will promptly notify the FTB of any suspected violations of security or confidentiality by its users by contacting the Franchise Tax Board Contact Robert Bisho of the Architecture and Data Management Bureau at (916) 845-4762.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS (continued)

5. NON-IRS INFORMATION: This agreement does not allow for the release of any confidential tax return information in the FTB files that may have been obtained from sources other than the taxpayer. No confidential Federal Tax Return information will be provided to the city. This agreement does not provide for the exchange of confidential federal tax returns or confidential tax return information obtained from the Internal Revenue Service by the FTB.
6. INFORMATION SECURITY: Information security is defined as the preservation of the confidentiality, integrity, availability, authenticity and utility of information. A secure environment is required to protect the confidential information obtained from the FTB pursuant to this Agreement. The City will store information so that it is physically secure from unauthorized access. The records received by the city will be securely maintained and accessible only by employees of the city business tax department who are committed to *protect the data from unauthorized access, use or disclosure.*
7. DESTRUCTION OF RECORDS: All records received by the agency from FTB and any database created, copies made, or files attributed to the records received will be destroyed within one year of receipt. The records shall be destroyed in a manner to be deemed unusable or readable and to the extent that an individual record can no longer be reasonably ascertained. Upon destruction of the records, the City will notify FTB of the completed destruction.
8. INDEMNIFICATION: The City agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting from any breach of confidentiality by the City and or its employees.
9. SETTLEMENT OF DISPUTES: In the event of a dispute, the City shall file a "Notice of Dispute" with the Assistant Executive Officer, of the Franchise Tax Board within ten (10) days of discovery of the problem. Within ten (10) days the Assistant Executive Officer, or his/her designee shall meet with the City and Project Manager for purposes of resolving the dispute. The decision of the Assistant Executive Officer shall be final.
10. SAFEGUARD AUDITS: The FTB retains the right to conduct on site safeguard review audits to the receiving city. The receiving city will be provided a minimum of seven (7) days notice prior to a safeguard review being conducted by the FTB Disclosure Office. The safeguard review will examine the adequacy of information security controls established by the City in compliance with the confidentiality requirements pursuant to this Agreement. The City will take appropriate disciplinary actions against any user determined to have violated security or confidentiality requirements.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS (continued)

11. **LIMITED WARRANTY:** The FTB does not warrant or represent the accuracy or content of the material available through this agreement, and expressly disclaims any express or implied warranty, including any implied warranty of fitness for a specific purpose.
12. **CANCELLATION:** The City may terminate this Agreement, in writing to the FTB for any reason, upon thirty days (30) prior written notice. In the event of a voluntary termination, the City agrees it will not be entitled to a refund. This Agreement may be terminated by either party in the event of any breach of the terms of this Agreement.
13. **INCIDENT REPORTING:** All unauthorized or suspected unauthorized access(es); uses and/or disclosures (incidents) of FTB data shall be reported to the FTB Contact, Robert Bisho of the Architecture and Data Management Bureau immediately upon discovery of the incident. The incident report shall contain the following: date, time, employee name, description of the incident or circumstances, and means of discovery. -

The City agrees to submit a completed FTB Security and Disclosure Questionnaire for each confirmed unauthorized access within 10 days of the confirmation of the incident. Upon discovery of any such incident(s), FTB will make the appropriate notification to affected California Resident(s) pursuant to the requirements of Civil Code Section 1798.29.

EXHIBIT E

CONFIDENTIALITY STATEMENT

State of California

Franchise Tax Board

Confidential tax return information is protected from disclosure by law, regulation, and policy. Information security is strictly enforced. Violators may be subject to disciplinary, civil, and/or criminal action. Protecting confidential tax return information is in the public's interest, the state's interest, and the city's interest.

A city employee is required to protect the following types of information received from the Franchise Tax Board:

- Taxpayer name
- Taxpayer address
- Taxpayer social security number or taxpayer identification number
- Principal business activity code

A city employee is required to protect confidential information by:

- Accessing or modifying information only for the purpose of performing official duties.
- Never accessing or inspecting information for curiosity or personal reasons.
- Never showing or discussing confidential information to or with anyone who does not have the need to know.
- Placing confidential information only in approved locations.
- Never removing confidential information from your work site without authorization.

As a city employee, you are required to know whether information is protected. If you have any question regarding whether particular information is confidential, check with your department's project coordinator.

Unauthorized inspection, access, use, or disclosure of confidential tax return information is a crime under state laws, including but not limited to Sections 19542 and 19552 of the California Revenue and Taxation Code and Section 502 of the Penal Code. Unauthorized access, inspection, use, or disclosure may result in either or both of the following:

- State criminal action
- State and/or taxpayer civil action

You are reminded that these rules are designed to protect everyone's right to privacy, including your own.

I certify that I have read the confidentiality statement printed above. I further certify and understand that unauthorized access, inspection, use, or disclosure of confidential information may be punishable as a crime and may result in disciplinary and/or civil action being taken against me.

Name	
Signature	Date